IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2610 OF 2003

Bombay Mercantile Cooperative)
Bank Ltd., a Cooperaetive Bank)
registered under the Multi)
Cooperatife Societies Act,2002)
having its Registered office)
at 89 Mohamedali Road,)
Mumbai 400 003.)....Petitioner

Versus

1. Mr. Mohammed Saleem Shaikh)
   6AB-7AB, Zariwala Building)
   Null Bazzar, Mumbai 400 003)

2. Bombay Mercantile Coop. Bank)
   Staff Union, a Union)
   registered under The Trade)
   Unions Act, 1926, having its)
   office at 78, Mohammedali)
   Road, Mumbai 400 003.)....Respondents

Mr.P.K.Rele with Mr.Piyush Shah for petitioner
Mr.V.P.Vaidya for respondents

WITH

WRIT PETITION NO.2337 OF 2004

1. Mr.Mohammed Saleem Shaikh)
   6AB-7AB, Zariwala Building)
   Nulla Bazar, Mumbai 400 003)....Petitioner

Versus

1. Bombay Mercantile Cooperative)
   Bank Ltd., 89, Mohammedali)
   Road, Mumbai 400 003.)

2. Shri S.C.Pandey)

Presiding Officer, Central)
Government Industrial)
Tribunal No.1, Shram Raksha)
Bhavan, Shivsrushti Road)
1st floor,Opp.Priyadarshini)
Eastern Express Highway,)
Sion, Mumbai 400 022.)....Respondents

Mr.V.P.Vaidya for petitioners
Mr.P.K.Rele with Mr.Piyush Shah for respondent

CORAM : DR.D.Y.CHANDRACHUD, J.

DATE : 25TH JULY, 2006.

ORAL JUDGMENT :

1. On 1st November, 1972, the first Respondent joined the services of the Petitioner as a Clerk. The Petitioner is a Cooperative Bank, now deemed to be registered under the Multi State Cooperative Societies Act, 2002. The first Respondent is working as an Assistant Accountant at the Fort Branch of the Bank since 1992. A charge-sheet was issued to the 1st Respondent on 3rd October,1992. Disciplinary proceedings were convened on a charge of negligence resulting in serious losses to the Bank, of committing an act prejudicial to the interest of the Bank and of conduct in breach of the rules of business of the bank governing the running of a department.

2. On 5th September, 1992 a cheque book requisition

slip, bearing Sr. Nos.926811 to 926820, was presented against Savings Bank Account No.839 in the name of Mr.K.S.Shikari for the issuance of a new cheque book. The requisition slip was submitted to the Token Clerk for verification and was thereafter placed before the First Respondent. The First Respondent put his initials and stamped the cheque book requisition slip in token of having verified the signature appearing on the said slip with the specimen signature recorded with the bank. A cheque book bearing Cheque Nos.260691 to 260700 was issued to a person who had presented the requisition slip and who acknowledged receipt of the cheque book. It is alleged that the cheque book requisition slip bearing No.926811 to 926820 was fake and the signature which appeared on the requisition slip did not tally with the specimen signature on the record of the bank. Despite this the requisition slip was approved by the First Respondent. It is alleged in the charge-sheet that the requisition slip contained several discrepancies which showed that it was not genuine. These included the following :-

(i) The paper which had been used on the requisition slip was rough and was normally not used in the cheque books supplied by the bank;

(is) The get up of printing was not according to the get up of cheque books supplied to the Fort Branch;

(iii) The name of the bank was printed in Hindi, below the name in English, which was not so in the case of Savings Books supplied to the Fort Branch;

(iv) The requisition slip did not contain a perforation nor did it have a counterfoil as in the case of a Savings Bank cheque book; and

(v) The series 926811 to 926820 did not pertain to the Savings Account cheque books supplied to the Fort Branch.

Subsequently it is alleged that a cheque came to be issued and an amount of Rs.20,000/= was withdrawn by using a cheque from the cheque book which was handed over by the First Respondent.

3. The First Respondent submitted his explanation to the charge sheet and denied the allegations. The bank

proceeded with the enquiry. The enquiry commenced from 9th February,1993 and was concluded on 25th June, 1994. It is not disputed that the First Respondent participated in the enquiry and was duly represented by a defence representative. The Inquiry Officer submitted his report on 16th November, 1994 and came to the conclusion that the first respondent was guilty of the charges levelled against him. A copy of the report and of the findings thereon was forwarded to the petitioner on 6th January, 1995 under cover of a letter of the Disciplinary authority. The Disciplinary authority proposed a punishment of the stoppage of one annual increment. The First Respondent submitted his reply. The Disciplinary authority imposed a punishment of the stoppage of one annual increment on 22nd April, 1995 holding that the charges were duly established. The departmental appeal submitted by the first respondent was dismissed by the Appellate authority on 6th May, 1996.

4. In the meantime, the bank had initiated the promotion process for carrying out promotions to the Officers' Grade and a merit list was displayed on 22nd January 1993. The merit list was displayed before a charge-sheet came to be issued to the First Respondent in

the disciplinary proceedings on 3rd October, 1992. The bank did not promote the first respondent to the Officers' cadre during the pendency of the disciplinary proceeding and thereafter having regard to the provisions of Settlement to which a reference will made in this judgment. The dispute raised by the Union on behalf of the First Respondent was taken into conciliation and eventually, the appropriate Government made a reference to adjudication. The reference was with regard to the punishment of the stoppage of one annual increment and with regard to the denial of promotion to the first Respondent.

5. The Industrial Tribunal came to the conclusion that the findings in the Disciplinary proceedings were based on the evidence and that there was no perversity in the findings. The Tribunal then dealt with the second issue as to whether the Management was justified in refusing promotion to the First Respondent to the Officers' cadre. The Tribunal held that the First Respondent participated in the Promotion process prior to the initiation of disciplinary proceedings. The First Respondent was found eligible for promotion prior to the order of punishment. The Tribunal held that at the

highest, the imposition of a disciplinary penalty on the first respondent could be taken into account while reviewing the past service of the first respondent for the purpose of considering his entitlement for promotion. In these circumstances, the Tribunal held that the Management was not justified in holding the First Respondent to be disentitled to promotion. A direction was issued to the bank to consider the case of the first respondent for promotion to the post of an Officer taking into account the additional factor that he had been punished in the meantime. This factor of punishment was directed to be taken into account as a part of the service record of the First Respondent prior to promotion in accordance with the Memorandum of Settlement dated 9th January 1991.

6. The order of the Tribunal is questioned in these proceedings both the Management and by the workman. The workman is aggrieved by the order in so far as the Tribunal held that there was no perversity in the findings in the disciplinary enquiry. The Management questioned the order in so far as it directs the Bank to reconsider the grant of promotion to the First Respondent to the Officers' cadre by taking into account the disciplinary penalty as one factor relevant to the past service record.

7. It would be appropriate to take up first and foremost, the challenge by the workman to the legality of the findings of the Tribunal with regard to the disciplinary enquiry. The Tribunal has proceeded on the basis that it was exercising jurisdiction under Section 11A of the Industrial Disputes Act, 1947. The Tribunal approached the matter on the touchstone of Section 11A but nonetheless came to the conclusion that the findings that were arrived at in the disciplinary proceedings did not warrant interference and that the punishment imposed was fair and proper. The jurisdiction of the Tribunal was not in the present case governed by Section 11A in as much as the Tribunal was not dealing with a question either of discharge or dismissal. Section 11A, on the plain language of the statutory provision applies where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication. In the present case the punishment that has been imposed on the respondent is not of dismissal or discharge. Therefore, it cannot be said that the provisions of Section 11A were attracted to this proceeding. That being the position, the Tribunal was required to consider as to whether that

the findings that had been arrived at were perverse on a more restrictive standard of judicial review than the jurisdiction exercisable under Section 11A. Be that as it may, on the facts of the present case and even on the assumption that the wider jurisdiction under Section 11A was attracted, the Tribunal held that the findings of the disciplinary enquiry warranted no interference. So far as the merits of the charge are concerned, the report of the enquiry officer adverts to the normal procedure that would be required to be followed when a cheque requisition slip is submitted for obtaining a cheque book. The First Respondent was working in the bank since November, 1992 and for a period of merely 5 years prior to the incident he was working as Assistant Accountant at the Fort Branch. His duty included supervising ledgers of Current, Savings and Fixed Deposit Accounts, preparing periodic statements, commission vouchers, pay orders etc. In 1992, Respondent no.1 was performing the duties of verifying signatures and specimen signature cards pertaining to Savings Bank and Current Accounts. The procedure for the presentation of a requisition slip required the customer to present the slip to the token clerk. The token clerk in turn forwarded it to the signature verifying Supervisor. The signature verifying Supervisor compared the signature on the slip

with the specimen signature card held in his custody and if both the signatures tallied, he affixed a rubber stamp, in token of having verified the signature, together with his initials and forwarded the same to the Ledger Clerk. When the requisition slip was received by the Ledger Clerk he had to verify as to whether the cheque requisition slip was from the cheque book issued to the account holder from the noting of cheque series contained in the ledger folio. He also verified as to how many cheques were utilised from the previous cheque book issued and the operations in the account. Upon being satisfied with the above verification, the Ledger Clerk certified the requisition slip by putting his initials thereon and forwarded the same to the cheque book issuing authority, who is an Assistant Accountant. The First Respondent was the Assistant Accountant and was therefore in-charge of the issuance of a cheque book. The Assistant Accountant ensured that the verification of signatures by the verifying Supervisor and by the Ledger Clerk is properly carried out and thereafter issued the cheque book. Before doing so he had to write down the series of the cheque book on the cheque issue register and obtain the signature of the receiver of the cheque book on the register. The Enquiry officer held that the evidence on record showed

that the requisition slip was not the one issued to the account holder. Without completing the procedure of verifying the cheque series of the requisition slip with the cheque series mentioned in the ledger folio by the ledger keeper, a chequebook was issued by the first respondent in the name of the bank's customer. The Enquiry officer therefore concluded that respondent no.1 had issued a cheque book to the presenter of the requisition slip inspite of the fact that the signature did not tally with the specimen signature card held in the custody of the bank. The Enquiry report contained a finding that the First Respondent was negligent in the performance of his duties.

8. These findings of fact which have been arrived at in the proceedings are based on the evidence on record. On behalf of the bank all the relevant documents and material was produced in the course of the enquiry. The evidence was evaluated in the report of the Enquiry officer and it cannot be held that the findings of the Enquiry officer were perverse. However, on behalf of the first respondent (the petitioner in the companion writ petition) it has been submitted that the bank is guilty of discrimination in dealing with the employees involved in

the chain of certification of requisition slips. The grievance that the bank has acted discriminatorily must be established with reference to a cogent plea and on the basis of specific evidence. No such ground appears to have been raised in the course of the submissions before the Industrial Tribunal. Even in the writ petition before this court it has not been specifically pleaded that though the ground of discrimination was urged before the Tribunal, that was not been dealt with. Moreover, the First Respondent had an important Supervisory role to play in the process of Certification. He cannot be absolved of liability, even on the assumption that someone else ought to have been but was not proceeded against. The finding of the Tribunal that the finding of misconduct does not suffer from perversity hence does not warrant interference.

9. The Tribunal has upheld the contention of the First Respondent on the issue of promotion. In order to appreciate the controversy, a reference would have to be made to the Memorandum of Settlement dated 9th January 1991. The Settlement contains relevant provisions in respect of employees against whom disciplinary proceedings have been initiated, which are as follows :

> **"Employee in respect of whom disciplinary action has been taken for gross misconduct in the past would not normally be permitted to participate in the promotion process for a period of 3 years from the time of infliction of the punishment.**
>
> **In case, however, where minor penalties have been inflicted, a Committee of Executives would review and take a decision in regard to the eligibility for promotion having regard to the gravity of the misconduct and subsequent service record.**
>
> **Employee in respect of whom disciplinary action is in process, will however, be permitted to take part in the promotion process, subject to the condition that the promotions will be withheld until the completion of the disciplinary action. In the event of the employee being exonerated, the promotion, if due, will be given effect from the date on which it would have been otherwise effected but for the disciplinary action"**

This provision shows that in the first instance, an

employee against whom disciplinary action is in process is permitted to take part in the promotion process. However, the actual promotion is to be withheld until the completion of the disciplinary action. If the employee is exonerated, the promotion if due has to be given effect to from the date on which it would have been otherwise effected but for the disciplinary action. On the other hand once disciplinary action has been taken against the employee for gross misconduct in the past, he would not normally be permitted to participate in the promotional process for a period of three years from the date on which punishment was imposed. The settlement therefore contains provisions with regard to the modalities which are required to be followed when disciplinary proceedings are in progress during the process of promotion as well as the consequence that would ensue after the disciplinary proceedings are completed. During the pendency of disciplinary proceedings the case of the employee can be considered for promotion but the actual promotion is withheld and the employee would be granted promotion upon his being found fit provided he is exonerated in the disciplinary enquiry. In the event, that the disciplinary enquiry the results in a finding of gross misconduct, the prohibition on participating in the process of promotion

shall continue for a period of three years from the time of the infliction of the punishment.

10. In the present case the Tribunal proceeded on the basis that the First Respondent had been found to be eligible for promotion before the order of punishment. There is no dispute about the factual position that the merit list was displayed on 22nd January, 1992 and the charge-sheet in the disciplinary proceedings was issued on 3rd October, 1992. However, the display of a merit list for promotion to the post in the Officers' Grade did not bring the promotion process to a culmination. The process of promotion would stand culminated only upon an actual order of promotion being passed and promotion being granted to an individual employee. The grant of promotion to an officer whose name is on the Select List would be contingent on the existence of a vacancy. Therefore, even though the merit list was displayed by the bank on 22nd January, 1992, it cannot be asserted that employee had acquired a vested right to promotion or an indefeasible entitlement to promotion to the Officers' grade. Before the First Respondent was promoted to the Officers' Grade, the events constituting the charge of misconduct had taken place upon which the charge sheet was issued. Once the

disciplinary proceeding was initiated, the bank was justified by the terms of the settlement from withholding actual promotion. The grant of promotion was required to be withheld until the disciplinary proceeding was completed. Moreover, upon the disciplinary proceedings culminating in a finding of gross misconduct the consequence envisaged of withholding a departmental promotion for a period of three years ensued. It has not been urged before this Court or before the Tribunal that the charge was trivial in nature. The charge of negligence, particularly on the part of an Assistant Accountant of a Bank, which is established does establish a case of gross misconduct. The Tribunal therefore was in error in coming to the conclusion that the factum of disciplinary punishment should only be considered as one factor appearing in the past service record of the employee. By the terms of the settlement, the bank was entitled to withhold promotion during the pendency of the disciplinary proceeding and thereafter to abide by the result of the disciplinary enquiry.

11. In the circumstances, there is merit in the Petition filed by the Management to challenge the award passed by the Industrial Tribunal in so far as it directs

the Petitioner to consider the case of the first respondent for promotion. That part of the award and the operative direction contained in paragraph 19 of the award directing the Management to consider the case of the 1st respondent for promotion shall stand set aside. The petition filed by the workman in the circumstances shall stand dismissed. The Petitions are accordingly disposed of. No order as to costs.